

**AMENDMENT NO. \_\_\_\_\_**

**to the**

**INTERCONNECTION AGREEMENT – WISCONSIN**

**by and between**

**WISCONSIN BELL, INC. d/b/a SBC WISCONSIN**

**AND**

**KMC DATA, LLC**

The Interconnection Agreement ("the Agreement") by and between KMC Data, LLC ("KMC") and Wisconsin Bell, Inc. d/b/a SBC Wisconsin<sup>1</sup> ("SBC Wisconsin") is hereby amended as follows:

**1.0 AMENDMENTS TO THE AGREEMENT**

**Article III of the Agreement is amended by adding the following:**

**3.15 Terminating Traffic Language**

- 3.15.1 SBC Wisconsin will use commercially reasonable efforts to open future NPA-NXX codes that are not assigned to a SBC Wisconsin Incumbent exchange ("out of area exchanges") for KMC on SBC Wisconsin's network.
- 3.15.2 Prior to SBC Wisconsin opening any codes that relate to InterLATA local traffic that is covered by an FCC approved or court ordered InterLATA boundary waiver SBC Wisconsin and KMC will negotiate appropriate terms and conditions for the exchange of this traffic.
- 3.15.3 For KMC originated traffic, since KMC operates as a CLEC within SBC Wisconsin exchange areas and has a switch and/or a point of interconnection located within SBC Wisconsin exchange areas for the purpose of providing telephone exchange service and exchange access in such exchange areas, SBC Wisconsin will accept traffic at its tandem switch to or from out of area exchanges over local interconnection facilities currently in place, or that may be established, between the Parties up to a DS1 (24 DS0s) level of traffic. When such out of area traffic is Local Traffic that is exchanged between the end users of KMC and SBC Wisconsin, the Parties agree to establish direct end office trunks as specified in the Parties' Interconnection Agreement and the Amendment Superceding Certain Reciprocal Compensation, Interconnection and Trunking Terms.
- 3.15.4 For SBC ILECs originating traffic the Parties agree that this traffic will be delivered to KMC's existing POI arrangements in the LATA where the traffic originates in accordance with the POI requirements set forth in KMC's underlying Agreement and Amendment Superceding Certain

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<sup>1</sup> Wisconsin Bell, Inc. ("Wisconsin Bell"), a Wisconsin corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the States of Illinois, Indiana, Michigan, Ohio and Wisconsin. Wisconsin Bell offers telecommunications services and operates under the names "SBC Wisconsin" and "SBC Ameritech Wisconsin", pursuant to assumed name filings with the State of Wisconsin. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc.

Reciprocal Compensation, Interconnection and Trunking Terms until the expiration of such amendment at which time the POI requirements in the underlying ICA shall apply. There shall be no limitation on the amount of out of area Local Traffic that can be exchanged between KMC and SBC Wisconsin over direct end office trunks where such traffic is terminated to end users served by the affected end office.

- 3.15.5 For Transit Traffic, as that term is defined in this Agreement, KMC agrees to establish direct end office trunks to any third party carrier's end office when traffic levels exceed one DS1 (24 DS0s) to or from that end office for a period of three months.
- 3.15.6 The compensation arrangements for all types of traffic exchanged between the Parties shall be as set forth in the Parties' Interconnection Agreement and the Amendment Superceding Certain Reciprocal Compensation, Interconnection and Trunking Terms until the expiration of such amendment at which time the Reciprocal Compensation terms and conditions of the underlying ICA shall apply.
- 3.15.7 The underlying ICA sets forth the terms and conditions pursuant to which SBC Wisconsin agrees to provide CLEC with access to unbundled network elements (UNEs) under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC Wisconsin's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that SBC Wisconsin is only obligated to make available UNEs and access to UNEs, Collocation, Interconnection and/or Resale to CLEC in SBC Wisconsin's incumbent local exchange areas. SBC Wisconsin has no obligation to provide such UNEs, Collocation, Interconnection and/or Resale to CLEC for the purposes of CLEC providing and/or extending service outside of SBC Wisconsin's incumbent local exchange areas. In addition, SBC Wisconsin is not obligated to provision UNEs or to provide access to UNEs, Collocation, Interconnection and/or Resale and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC Wisconsin's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in the underlying ICA, and any associated provisions set forth in amendments to the current ICA (including but not limited to the rates set forth in this Agreement associated with UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall apply only to the Parties and be available to CLEC for provisioning telecommunication services within an SBC Wisconsin incumbent local exchange area(s) in the State in which CLEC's current ICA with SBC Wisconsin has been approved by the relevant state Commission and is in effect.

## 2.0 MISCELLANEOUS

- 2.1 This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement nor the Amendment Superceding Certain Reciprocal Compensation, Interconnection and Trunking Terms, but rather, this Amendment shall be coterminous with the underlying Agreement.
- 2.2 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT AND THE AMENDMENT SUPERCEDING CERTAIN RECIPROCAL COMPENSATION, INTERCONNECTION AND TRUNKING TERMS SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
- 2.3 This Amendment shall be filed by SBC Wisconsin with and is subject to approval by the Public Service Commission of Wisconsin (PSC-WI) and shall become effective ten (10) days following

approval by the PSC-WI.

- 2.4 In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC*, et. al, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001) (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"); provided, however, nothing in this paragraph is intended nor should be construed as modifying or superseding the rates, terms and conditions in the Parties' Amendment Superseding Certain Compensation, Interconnection and Trunking Provisions ("Superseding Amendment"), except as otherwise explicitly provided by the KMC's Amendment Superseding Certain Reciprocal Compensation, Interconnection and Trunking Terms ("Superseding Amendment") for the time period from its effective date through December 31, 2004, as specifically set forth below. Rather, except as otherwise explicitly provided in the Superseding Amendment, in entering into this Amendment, each Party fully reserve all of their rights, remedies and arguments. This reservation of rights includes but is not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). The Parties acknowledge and agree that they previously entered into the Superseding Amendment, in which they waived certain rights they may have under the Intervening/Change in Law paragraph of the Agreement with respect to any reciprocal compensation, compensable traffic (as defined in the Superseding Amendment), POIs or trunking requirements that are subject to the Superseding Amendment from the effective date of the KMC Superseding Certain Reciprocal Compensation Superseding Amendment through December 31, 2004. Notwithstanding anything to the contrary in the Agreement and this Amendment, and in addition to reserving their other rights, the Parties acknowledge and agree that SBC Wisconsin has exercised its option to adopt the FCC ISP terminating compensation plan ("FCC Plan") in Wisconsin and that in entering into this Amendment, SBC Wisconsin is reserving its right to seek conforming modifications to the Agreement to formally incorporate the rates, terms and conditions of such FCC Plan into the Agreement to formally incorporate the rates, terms and conditions of such FCC plan into the Agreement which shall apply between the Parties upon expiration of the Superseding Amendment, unless the Parties otherwise mutually agreed in writing to another arrangement and such other arrangement is approved and in effect as of the date of expiration of the Superseding Amendment. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis

or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be modified as required to effectuate the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement associated with any such invalidation, modification or stay. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by SBC Wisconsin, signing by and through its duly authorized representative, and KMC, signing by and through its duly authorized representative.

**KMC Data, LLC**

**Wisconsin Bell , Inc. d/b/a SBC Wisconsin by SBC  
Telecommunications, Inc., its authorized agent**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Mike Auinbauh

Title: \_\_\_\_\_

Title: For/President - Industry Markets

Date: \_\_\_\_\_

Date: \_\_\_\_\_